

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1, 2, 4, 6, 9-12, 14-20, 26-33, 35-43, and 57-80 are pending, with Claims 1, 2, 4, 6, 9-12, 14-20, 27-33, and 35-42 withdrawn from consideration.

**Amendment to the Claims**

Claims 26, 43, and 57-80 have been examined with no claims being allowed. Claims 26 and 43 have been amended herein to include the limitations of Claims 59, 66, 67, 71, 78, and 79, respectively. Thus, Applicants respectfully request cancellation of Claims 59, 66, 67, 71, 78, and 79. Applicants have further amended Claims 26 and 43 to include the limitation of the upper layer including between 20 and 80 wt% superabsorbent material. Support for this limitation is provided at page 13, lines 19-21, of the specification. No new matter has been added by this Amendment.

No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims has been reduced.

**Claim Rejections - 35 U.S.C. §102**

The rejection of Claims 26, 57-63, 66-68, 43, and 70-79 under 35 U.S.C. §102(b) as being anticipated by Everett et al. (PCT Publication No. WO 99/17695, hereinafter "Everett") is respectfully traversed, particularly in view of the above Amendment and the following remarks.

Everett discloses a multi-layer absorbent core. An upper layer 48 and a lower layer 50 may each include pulp fluff and superabsorbent material.

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Everett does not disclose each and every element or limitation of Applicants' independent Claims 26 or 43. Applicants'

invention as recited in independent Claims 26 and 43 requires a drum-formed upper layer in combination with an air-laid lower layer.

The Examiner states that the limitations of the upper layer being drum-formed and the lower layer being air-laid are directed to a process of making the article, and cites a case that states that the determination of patentability of product-by-process claims is based on the product itself. Although “drum-formed” and “air-laid” are descriptive of types of processes, these terms are also used to identify materials made according to such processes. More particularly, a person skilled in the art can visually and/or tactically identify drum-formed and air-laid materials subsequent to the manufacturing process because drum-formed and air-laid materials have distinctive properties distinguishable from other materials. Thus, drum-formed and air-laid materials are ***not*** the same as or obvious from other types of materials made according to other methods.

As indicated in MPEP 2113, “[t]he structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding “interbonded by interfusion” to limit structure of the claimed composite and noting that terms such as “welded,” “intermixed,” “ground in place,” “press fitted,” and “etched” are capable of construction as structural limitations.)”

The term “drum-formed” is defined at page 9, lines 1-4, of the present application as referring to an online process that is an integral part of a consumer product converting operation for making materials wherein fibers, such as cellulose-type fibers, and superabsorbent particles, are formed into a cohesive layer within a drum former.

In contrast, the term “air-laid” is defined at page 8, lines 6-11, of the present application as a process for making a material wherein fibers, such as cellulose-type fibers, and superabsorbent materials are arranged on a wire as a base sheet, and where the base sheet can be sprayed with an adhesive or combined with

heat-activated fibers, powders, or the like. Alternatively, the base sheet can be calendered with sufficient heat and pressure to produce significant hydrogen bonding between base sheet components. The air-laid material is thus a bonded material.

The combination of a high-density air-laid lower layer and a drum-formed upper layer allows a soft and flexible absorbent material to achieve conformability and comfort while reducing bulk and maintaining intake capability with the full absorbent capacity required of the absorbent product, as explained at page 28, lines 13-16, of the present application. Instead of combining a drum-formed layer and an air-laid layer, Everett relies on modifications to the physical and/or chemical composition of the component materials or modifications to the physical configurations of the components to provide improved performance (page 8, lines 5-7).

For at least the reasons presented above, Applicants respectfully submit that Claims 26 and 43 are not anticipated by Everett. Because Claims 57-63 and 66-68 depend from Claim 26, and Claims 70-79 depend from Claim 43, these claims are also not anticipated by Everett. Thus, Applicants respectfully request withdrawal of this rejection.

### **Claim Rejections - 35 U.S.C. §103**

#### **A. Everett in view of Weisman**

The rejection of Claim 64 under 35 U.S.C. §103(a) as being unpatentable over Everett in view of Weisman et al. (U.S. Patent No. 4,673,402, hereinafter “Weisman”) is respectfully traversed.

As explained above, Everett fails to disclose or suggest an absorbent material having a drum-formed upper layer in combination with an air-laid lower layer. As pointed out by the Examiner, Everett also fails to disclose or suggest an upper layer having a bottom surface area that is greater than a surface area of a top surface of a lower layer.

Everett discloses between 20 and 75 wt% superabsorbent material in the upper layer, between 20 and 50 wt% superabsorbent material in the lower layer, and the upper layer is either the same size or *smaller* than the lower layer. In contrast,

Weisman discloses a dual-layered absorbent core in which the upper layer is either the same size or ***larger*** than the lower layer. The upper layer includes up to 8 wt% hydrogel (superabsorbent) material, whereas the lower layer includes between 9 and 60 wt% hydrogel (superabsorbent) material.

To establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Because these two references disclose opposite size configurations, these references teach away from the combination thereof. That is, Everett discloses an upper layer having a greater amount of superabsorbent material and a smaller surface area than a lower layer, whereas Weisman discloses just the opposite, namely a lower layer having a greater amount of superabsorbent material and a smaller surface area than an upper layer. There is no motivation to reverse the dimensions of the layers in Everett, as suggested by the Examiner. In fact, Weisman reinforces the same correlation between superabsorbent content and size of the layer as present in Everett. Thus, it would be completely illogical to reverse the layer dimensions in Everett based on Weisman, since Weisman clearly discloses the layer having a greater amount of superabsorbent material as having smaller dimensions than the other layer.

For at least the reasons given above, Applicants respectfully submit that the teachings of Everett in view of Weisman fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**B. Everett in view of Burgeni**

The rejection of Claims 65 under 35 U.S.C. §103(a) as being unpatentable over Everett in view of Burgeni (U.S. Patent No. 3,494,362) is respectfully traversed.

As explained above, Everett fails to disclose or suggest an absorbent material having a drum-formed upper layer in combination with an air-laid lower layer. Burgeni also fails to disclose or suggest a drum-formed upper layer in

combination with an air-laid lower layer. Instead, Burgeni discloses an absorbent pad having a corrugated insert.

Since neither Everett nor Burgeni discloses or suggests a drum-formed layer in combination with an air-laid layer, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify these references or to combine reference teachings to achieve an absorbent material that includes a drum-formed layer in combination with an air-laid layer.

Another requirement for establishing a prima facie case of obviousness is that the prior art references, when combined, must teach or suggest all the claim limitations. Since neither Everett nor Burgeni discloses or suggests a drum-formed layer in combination with an air-laid layer, the combination of Everett and Burgeni also fails to disclose or suggest a drum-formed layer in combination with an air-laid layer.

For at least the reasons given above, Applicants respectfully submit that the teachings of Everett in view of Burgeni fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

### **Conclusion**

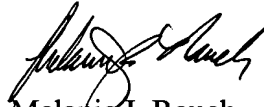
Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Serial No. 09/939,535

Docket No.: KCC-16,221

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Melanie I. Rauch", written in a cursive style.

Melanie I. Rauch  
Registration No. 40,924

Pauley Petersen & Erickson  
2800 West Higgins Road, Suite 365  
Hoffman Estates, Illinois 60195  
(847) 490-1400  
FAX (847) 490-1403